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**MEMORANDUM FROM RISK AND LOSS CONTROL MANAGER
TO AUDITOR'S DEPARTMENT REGARDING**

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INTRODUCTION

In accordance with the City Auditor's 1992-93 Audit Workplan, we have reviewed the city of San Jose's accounts receivable collection process specifically pertaining to the San Jose Fire Department's hazardous materials storage permit and inspection fees. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

We thank those individuals in the San Jose Fire Department who gave their time, information, insight, and cooperation during this audit. Specifically, we thank the staff of the Bureau of Fire Prevention - Hazardous Materials Code Enforcement Section, the Hazardous Incident Team, and the Bureau of Administrative Services for their responsiveness to our numerous requests for information.

SCOPE AND METHODOLOGY

We analyzed the permit fee structure of the Hazardous Materials Program. We contacted several cities and counties that are regulating hazardous materials handling in their respective jurisdictions. For the jurisdictions contacted, we compared their permit fee structures and exemptions and program operations with those of the city of San Jose (City).

We also reviewed the Hazardous Materials Program for compliance with the San Jose Municipal Code.

Our review included analysis of the Hazardous Materials Program's cost recovery system and the feasibility of recouping part of the San Jose Fire Department's Hazardous Incident Team (HIT) and other costs. In this connection, we analyzed the HIT's records of responses to emergencies involving hazardous materials and other City functions related to the Hazardous Materials Program, such as the Environmental Services Department's Technical Services Program.

We conferred with the City's Risk and Loss Control manager and consulted the City Attorney about the possibility of the San Jose Fire Department requiring proof of insurance before issuing hazardous materials storage permits as a means to protect the City from financial liabilities.

On a limited basis, we tested the hazardous materials inventories of several business facilities in the City to determine if these businesses were promptly and accurately reporting their hazardous materials and were in compliance with the hazardous materials regulations.

BACKGROUND

Purpose And Description Of The Hazardous Materials Program

The purpose of the Hazardous Materials Program is to ensure the safe storage of hazardous materials through a permit and inspection program. In addition, a Hazardous Incident Team (HIT) responds to any emergency situation involving hazardous materials.

Regulated materials include a wide range of flammable/combustible liquids, corrosives, gases, oxidizers, and other hazardous materials. Managers of any facility where hazardous materials are stored are required to submit a management plan describing what materials are stored, a facility map showing where these materials are stored, an emergency response plan, an emergency training plan, and a monitoring plan describing what methods are being used to assure safe storage. These requirements help protect the environment by preventing spills and leaks and facilitating early discovery and prompt cleanup when spills and leaks do occur.

The Hazardous Materials Code Enforcement Program

The Hazardous Materials Code Enforcement Program's purpose is to protect health, life, environmental resources, and property by regulating the safe storage, dispensing, use, and handling of hazardous materials. This program is part of the Hazardous Materials Program.

The Hazardous Incident Team

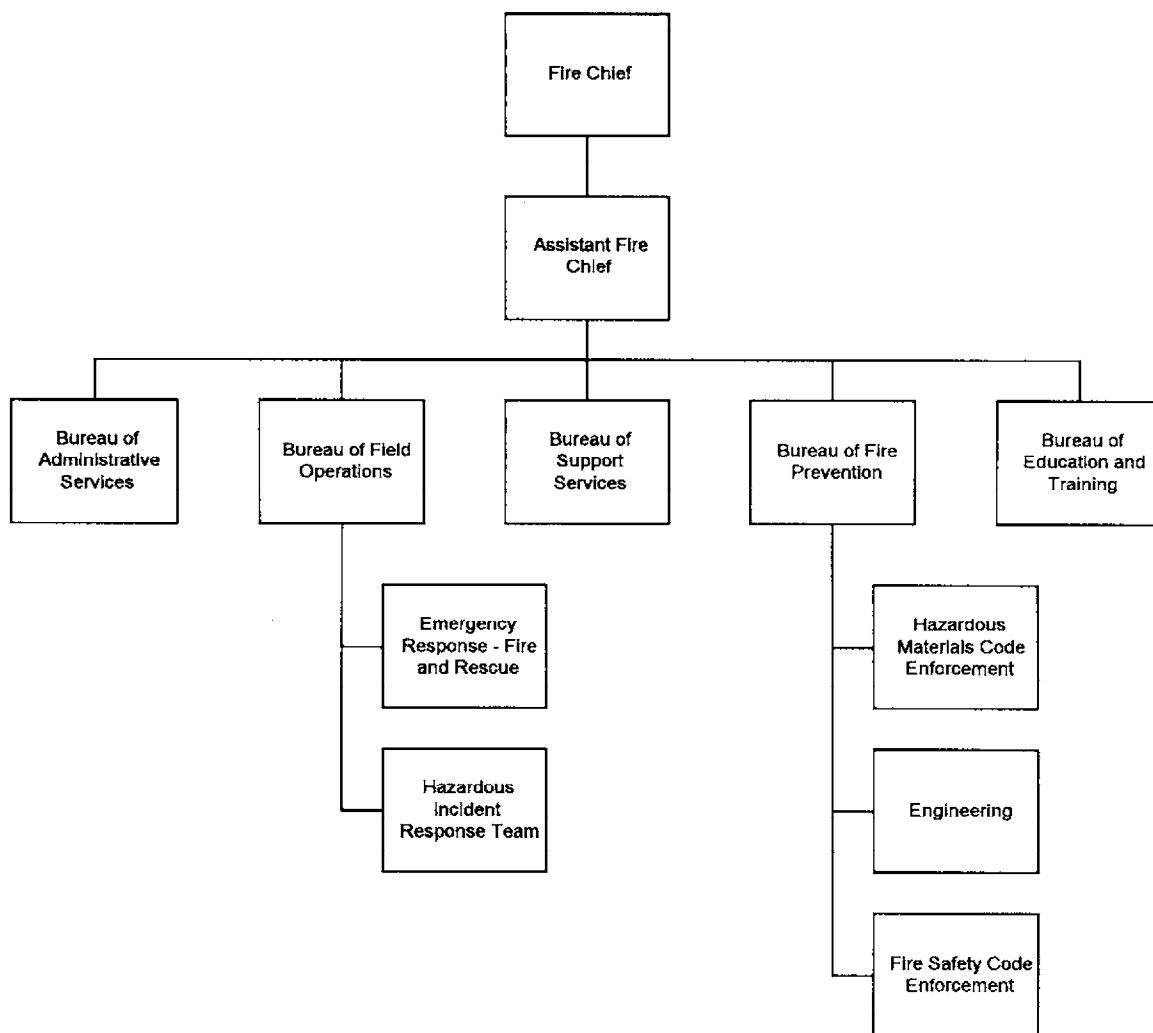
The HIT was formed to deal primarily with large-scale or technically complicated emergency hazardous materials incidents. From July 1, 1991, through July 31, 1992, the HIT responded to 220 incidents. The HIT is supervised by a battalion chief and is staffed with one fire captain, one fire engineer, and two firefighters for each of the three shifts.

Appendix F shows the HIT's mission and history. HIT was developed and budgeted under the General Fund in 1980. The Hazardous Materials Storage Ordinance, authorizing hazardous materials permit fees, was adopted in May 1983. The HIT's mission includes to (1) respond to hazardous materials-related emergencies, (2) review Hazardous Materials Management Plans (HMMP) of the hazardous materials facilities as required by the Hazardous Materials Storage Permit Ordinance, (3) preplan for emergencies at the facilities, and (4) provide training to fire companies on emergency procedures relating to hazardous materials.

According to the HIT, the San Jose Fire Department (SJFD) is one of the few fire departments in the country with a hazardous materials response unit staffed by a dedicated company on a 24-hour basis. The HIT responds to emergencies within the 210-square mile jurisdiction of the SJFD. Currently, there are only three other similar teams operating within Santa Clara County that the HIT works with in joint training exercises and on emergency calls. The HIT spends considerable time in reviewing HMMPs and preplanning and training for emergency response to hazardous materials facilities. The SJFD cooperated with the International Association of Firefighters in developing a "First Responder" course to meet new OSHA requirements available to firefighters nationwide.

Although the HIT responds mostly to hazardous materials incidents, it is organizationally under the SJFD's Bureau of Field Operations and not with the Hazardous Materials Code Enforcement as shown on the following organization chart. Consequently, none of the HIT expenditures are included in the cost recovery system of the Hazardous Materials Code Enforcement Program.¹

CHART I
FIRE DEPARTMENT - ORGANIZATION CHART



¹ See FINDING I for a fuller discussion of this issue.

The San Jose Municipal Code Chapter 17.68

Chapter 17.68 of the San Jose Municipal Code states in part that "*The purpose of this chapter is the protection of health, life, resources, and property through prevention and control of unauthorized discharges of hazardous materials.*" Chapter 17.68 prescribes how hazardous materials are to be handled, the requirements of submitting a HMMP, the definition of the quantity ranges of the materials for permit fee billing, and the responsibilities of the facility permittees.

The California Health And Safety Code Chapter 6.95

Chapter 6.95 of the California Health and Safety Code, which is entitled "*Hazardous Materials Release Response Plans and Inventory,*" regulates the handling of hazardous materials. The Code defines the guidelines for reporting hazardous materials, the role of counties and cities in regulating hazardous materials, the minimum standards and review of business plans, reporting requirements and exemptions, guidelines in setting up fees, as well as the fines for violations.

Revenue History

Revenues for the Hazardous Materials Code Enforcement Program, which include hazardous materials storage permit fees, inspection fees, plan reviews, and other permit fees like storage tank installation, tank removals, and site closures were as follows for 1987-88 through 1991-92:

**HAZARDOUS MATERIALS CODE
ENFORCEMENT PROGRAM REVENUES
FOR 1987-88 THROUGH 1991-92**

| <u>Fiscal Year</u> | <u>Hazardous Materials Code Enforcement Revenues</u> |
|---------------------------|---|
| 1987-88 | \$1,204,384 |
| 1988-89 | 1,165,636 |
| 1989-90 | 1,278,743 |
| 1990-91 | 1,473,577 |
| 1991-92 | 1,407,739 |

Program Accomplishments

In Appendix C, the SJFD informs us of its major accomplishments in the administration of the Hazardous Materials Program. According to the Fire Chief,

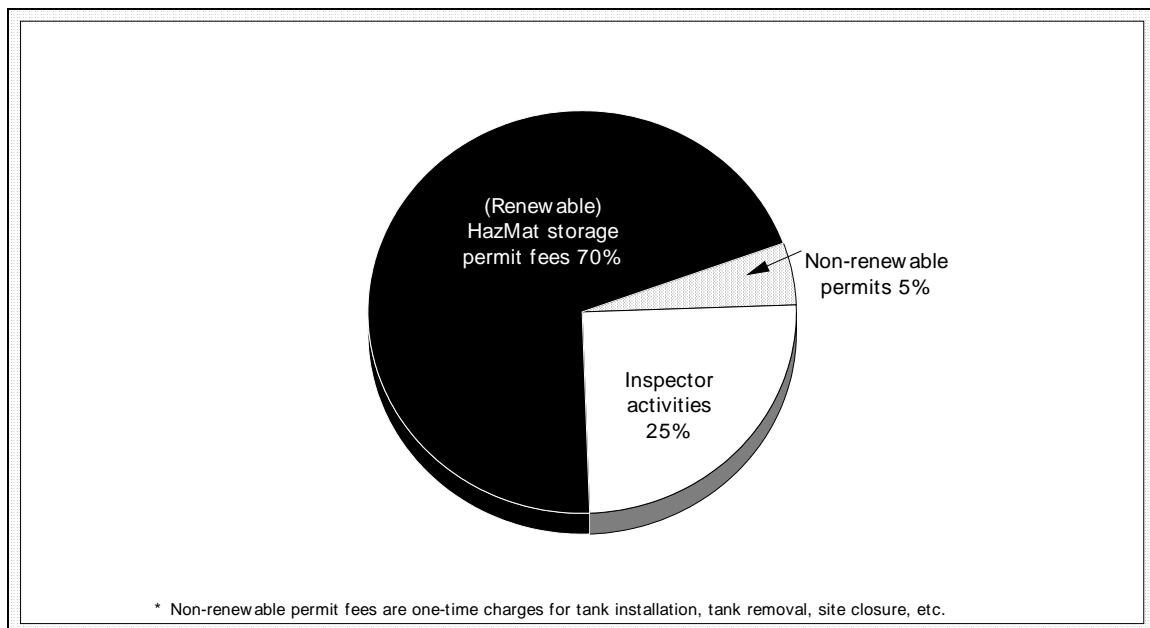
1. The Hazardous Materials Program has been 100 percent cost recovery since its reorganization in 1987-88.
2. The Bureau of Fire Prevention participated in a task force which reviewed the Bureau of Fire Prevention revenues.
3. In spite of the continuous increase in the Hazardous Materials Code Enforcement Section workload, the Section has met its program goals without adding personnel. This is partly attributable to increased productivity and increased efficiency through the use of personal computers.
4. The SJFD has improved its billing procedures to facilitate timely receipt of revenue.
5. Approximately 75 percent of the Hazardous Materials Program revenue is from renewable and non-renewable permits. The other 25 percent is from billable inspector services. Since the cost recovery mandate includes recovery of salaries and overhead for all support staff positions

and all managerial positions, the SJFD believes this is an equitable balance.

6. The hazardous materials storage permit fees comprise approximately 70 percent of the Hazardous Materials Program revenue. Individual facilities are billed, up to a limit, on the quantity of hazardous materials stored. The hazardous materials inventory and other information is contained in the HMMP. The complexity of the HMMP, and the time required to review it, is dependent on the range of hazard classes and, to some degree, the quantity of hazardous materials within each hazard class. The SJFD believes the hazardous materials storage permit fee reflects the time necessary to review the HMMP and other non-billable services rendered in regulating the facility. The SJFD also believes that the quantity and range of hazard classes reflect the degree of hazard potential.

CHART II

HAZARDOUS MATERIALS PROGRAM REVENUES



FINDING I

THE CITY CAN RECOUP ABOUT \$900,000 ANNUALLY AND \$2.8 MILLION IN UNRECOUPED PRIOR YEARS' COST BY INCLUDING HAZARDOUS INCIDENT TEAM COSTS IN ITS HAZARDOUS MATERIALS PROGRAM COST RECOVERY SYSTEM

The city of San Jose's (City) Hazardous Materials Program (Program) operates on a cost recovery system. The San Jose Municipal Code allows the Program to recover its operating costs. Although the Program is recovering its costs as budgeted, it does not recover the San Jose Fire Department's (SJFD) Hazardous Incident Team (HIT) costs. The HIT's primary purpose is to deal with large-scale or technically complicated emergency hazardous materials incidents. According to the City Attorney, the HIT costs that are related to the Program's permitted facilities can be considered costs of administering the Program. Accordingly, the City could recoup current and prior years' costs by including HIT expenditures in the cost recovery for the Program. By so doing, the Program could

- Generate \$900,000 annually in additional fees to cover HIT current costs and
- Reimburse the General Fund about \$2.8 million for the HIT costs the City incurred but did not recoup in prior years.

Our review also revealed that the City can recover these additional costs by

- Restructuring the hazardous materials storage permit fees to reflect the volume and degree of the hazard potential of permittees with large inventories of hazardous materials;

- Collecting hazardous materials storage permit fees from hazardous materials handlers that are currently exempt, including City enterprises, school districts, and other government agencies; and
- Collecting hazardous materials storage permit fees from retailers who stock hazardous materials packaged for consumers.

In our opinion, the SJFD should (1) include in the cost recovery system for the Program the costs of the HIT activities that relate to the Program; (2) report to the City Council on the feasibility of recouping prior years' Program-related costs that the General Fund subsidized; and (3) revise its Program fee structure considering the above alternatives.

The Hazardous Materials Program Cost Recovery System

The San Jose Municipal Code allows the SJFD to operate the Program on a cost recovery system. Accordingly, the City Council has approved, and the SJFD has implemented, a Hazardous Materials Permit and Inspection Fee Schedule designed to recover the costs of the Program. The current revenues from permit and inspection fees are sufficient to recoup the costs of the SJFD's Hazardous Materials Code Enforcement Section and part of the Environmental Services Department's Technical Services Program. However, the current revenues do not cover the SJFD's HIT costs relating to emergency response activities and plans affecting permitted businesses and agencies.

Table I summarizes the Program's cost recovery for 1991-92.

TABLE I

CITY OF SAN JOSE

HAZARDOUS MATERIALS PROGRAM COST RECOVERY

| | <u>Total 1991-92 Costs</u> | <u>Percentage Chargeable To Program</u> | <u>Amount Chargeable To Program</u> | <u>Current Cost Recovery</u> |
|--|---|--|--|---|
| FIRE DEPARTMENT | | | | |
| HAZARDOUS MATERIALS PROGRAM | | | | |
| Salaries | \$ 770,000 | 100.0 | \$ 770,000 | \$ 770,000 |
| Overtime | 1,000 | 100.0 | 1,000 | 1,000 |
| Benefits | 239,000 | 100.0 | 239,000 | 239,000 |
| Supplies & Communications | 26,000 | 100.0 | 26,000 | 26,000 |
| Training | 10,000 | 100.0 | 10,000 | 10,000 |
| Machinery & Equipment | 33,000 | 100.0 | 33,000 | 33,000 |
| City Overhead | <u>251,000</u> | 100.0 | <u>251,000</u> | <u>251,000</u> |
| Subtotal | 1,330,000 | | 1,330,000 | 1,330,000 |
| HAZARDOUS INCIDENT TEAM | | | | |
| Salaries | 698,000 | 66.4 | 463,000 | 0 |
| Overtime | 48,000 | 66.4 | 32,000 | 0 |
| Benefits | 263,000 | 66.4 | 175,000 | 0 |
| Supplies & Communications | 44,000 | 66.4 | 29,000 | 0 |
| Training | 7,000 | 66.4 | 5,000 | 0 |
| Machinery & Equipment | 33,000 | 66.4 | 22,000 | 0 |
| City Overhead | <u>243,000</u> | 66.4 | <u>161,000</u> | <u>0</u> |
| Subtotal | <u>1,336,000</u> | | <u>887,000</u> | <u>0</u> |
| TOTAL - FIRE DEPARTMENT | 2,666,000 | | 2,217,000 | 1,330,000 |
| ENVIRONMENTAL SERVICES DEPARTMENT | | | | |
| TECHNICAL SERVICES PROGRAM | | | | |
| Salaries | 95,000 | 50.0 | 47,500 | 47,500 |
| Benefits | 25,000 | 50.0 | 12,500 | 12,500 |
| City Overhead | <u>78,000</u> | 50.0 | <u>39,000</u> | <u>39,000</u> |
| TOTAL - ENVIR. SERVICES DEPT. | <u>198,000</u> | | <u>99,000</u> | <u>99,000</u> |
| TOTAL COSTS | <u>\$2,864,000</u> | | 2,316,000 | <u>\$1,429,000</u> |
| Current Cost Recovery | | | (1,429,000) | |
| COST NOT RECOVERED | | | <u>\$887,000</u> | |

As shown Table I, the current revenues from permit and inspection fees recoup the costs of the SJFD's Hazardous Materials Code Enforcement Section and part of the Environmental Services Department's Technical Services Program.² However, the current revenues do not cover the SJFD's HIT costs. In our opinion, the HIT's costs should be included in the Program cost recovery system to the extent the costs relate to emergency response activities and plans affecting permitted businesses and agencies. It should be noted that the HIT costs have not been included in the costs mandated to be recovered under the Program cost recovery system. Consequently, the SJFD has not included these costs in its hazardous materials storage permit fees.

The SJFD's Hazardous Incident Team

The HIT's primary purpose is to deal with large-scale or technically complicated emergency hazardous materials incidents.

The following are the primary hazardous materials-related responsibilities of the HIT:

- Respond to hazardous materials-related emergencies Citywide;
- Review pre-emergency plans that are required by the Hazardous Materials Storage Permit Ordinance. These plans detail what should be

² The Environmental Services Department's Technical Services Program manager stated that the Technical Services Program spends about 50 percent of its time in activities relating to the City's Hazardous Materials Program. These activities include (1) overseeing and developing the City's hazardous materials and groundwater protection regulations and compliance; (2) representing the City before the County Regional Hazardous Materials Advisory Committee, the EPA Southbay Committee, the Hazardous Materials Resource Committee, and the Federal Hazardous Materials Response Committee; (3) serving as liaison for the SJFD before the regulatory agencies in policy development for groundwater; (4) representing the City at legal functions with the District Attorney regarding violations of hazardous materials regulations; (5) assisting the HIT in the disposal of hazardous materials wastes and cleanup of fire stations; and (6) helping develop the hazardous materials fee structure.

- done if a hazardous materials emergency occurs at a facility where hazardous materials are used or stored; and
- Train other fire companies on correct procedures to use while dealing with hazardous materials-related emergencies within their first-in battalions.

The HIT spends 66.4 percent of its time in related hazardous materials permitted occupancies activities. These activities are broken down as follows:

TABLE II
HIT ACTIVITIES RELATED
TO THE HAZARDOUS MATERIALS PROGRAM

| | <u>Percentage Of HIT Activities</u> | <u>Percentage Relevant To Hazardous Materials Permitted Occupancies</u> |
|-------------------------------|--|--|
| Incident Response* | 10 | 4.4 |
| Training and HMMP Preplanning | 40 | 28.0 |
| HIT Administration | <u>50</u> | <u>34.0</u> |
| Totals | 100 | 66.4 |

* The SJFD stated that "Incident Response" included response to abandoned hazardous materials. Our review indicated that in 14 out of 71 responses during 1991-92, it was not possible to determine if the hazardous materials were abandoned by San Jose permitted facilities.

The City Attorney's Opinion On Recouping The HIT Costs

Section 17.68.710 of the San Jose Municipal Code states:

Fees shall be as set forth in the schedule of fees established by resolution of council and shall be sufficient to recover costs of administering this chapter . . .

According to the City Attorney, the HIT costs that are related to the permitted facilities can be considered "*costs of administering the program*" under San Jose Municipal Code Section 17.68.710. Therefore, these costs can appropriately be recovered through the hazardous materials permit and inspection fees.

**The City Can Recoup About \$900,000 Annually
By Including HIT Expenditures In The Cost Recovery
For The Hazardous Materials Program**

Based on the HIT's \$1,336,000 expenditures for 1991-92 and the HIT spending about 66.4 percent of its time on related hazardous materials permitted occupancies, we estimate that the City is entitled to recover an additional \$900,000 annually in hazardous materials permit and inspection fees.

In our opinion, the SJFD should include in the cost recovery system for the Program the costs of the HIT activities that relate to emergency response plans affecting the Program.

**The Hazardous Materials Program Can Reimburse
The General Fund About \$2.8 Million For The HIT Costs
Incurred But Not Recouped In Prior Years**

From 1987-88 through 1992-93, we estimate the HIT will cost the City approximately \$5.6 million. Assuming about 66.4 percent of the HIT expenditures since 1987-88 were related to the permitted facilities, the City would be entitled to recover approximately \$3.7 million of HIT costs through the hazardous materials permit and inspection fees. However, as shown in Table III, the additional costs to be recovered should be \$2.8 million due to excess cost recoveries from 1987-88 through 1992-93.

TABLE III
HAZARDOUS MATERIALS PROGRAM COST RECOVERY
FROM 1987-88 THROUGH 1992-93
(IN THOUSANDS)

| <u>Fiscal Year</u> | <u>Hazardous Materials Code Enforcement Revenues</u> | <u>Hazardous Materials Program Costs (Excluding HIT Costs)</u> | <u>Excess Cost Recovery Before HIT Costs</u> | <u>Estimated Recoverable HIT Costs</u> | <u>Additional Costs To Be Recovered</u> |
|---------------------------|---|---|---|---|--|
| 1987-88 | \$1,205 | \$ 866 | \$339 | \$ 379 | \$ 40 |
| 1988-89 | 1,166 | 1,102 | 64 | 405 | 341 |
| 1989-90 | 1,279 | 1,128 | 151 | 447 | 296 |
| 1990-91 | 1,474 | 1,318 | 156 | 697 | 541 |
| 1991-92 | 1,408 | 1,429 | (21) | 887 | 908 |
| 1992-93* | <u>1,544</u> | <u>1,304</u> | <u>240</u> | <u>900</u> | <u>660</u> |
| | <u>\$8,076</u> | <u>\$7,147</u> | <u>\$929</u> | <u>\$3,715</u> | <u>\$2,786</u> |

* Estimated

According to the City Attorney, current HIT costs related to permitted facilities can be appropriately recovered through the hazardous materials permit and inspection fees. However, the City Attorney stated that recouping prior years' Program-related costs may raise legal issues that the City Attorney would still need to research. According to the City Attorney, *"With respect to the recommendation concerning recouping prior years' costs, our Office would need to analyze whether this recommendation is consistent with the legal requirement that fees must be set in proportion to the benefits received by program participants. In other words, it is unclear to us whether a business which is currently permitted, but was not permitted during prior years, can be required to subsidize the recoupment of prior years' program costs."*

However, in the city of Los Angeles, the hazardous materials program fee structure is designed to recover prior years' costs. According to the Los Angeles Fire Department, the fee structure ". . . will generate an estimated \$6,300,000 in revenue, which will cover Program costs and reduce the deficit caused by 'start-up' costs by almost \$2,000,000 annually . . . it is estimated that the General Fund will be reimbursed in three to six years."

In our opinion, the SJFD and the City Attorney should report to the City Council on the feasibility of recouping prior years' Program-related costs that the General Fund subsidized.

The City Can Recover HIT Costs Through Various Means

The City's hazardous materials storage permit fee schedule was initially approved by the City Council in 1987-88 and revised in 1992-93. Initially, the hazardous materials storage permit fees consisted of \$110 gradations for each of the five graduated quantity ranges for each hazard class. In 1992-93, the gradation amount was increased to \$125. Table IV shows the current quantity ranges and permit fees.

TABLE IV
CITY OF SAN JOSE
HAZARDOUS MATERIALS STORAGE PERMIT
QUANTITY RANGES AND FEES

| <u>Material</u> <u>State</u> | <u>Quantity Range</u> | <u>Fees</u> |
|---|--------------------------------|--------------------|
| Liquids: | | |
| 1 | Less than 55 gallons | \$125 |
| 2 | 55 to 550 gallons | 250 |
| 3 | 551 to 2,750 gallons | 375 |
| 4 | 2,751 to 5,500 gallons | 500 |
| 5 | Greater than 5,500 gallons | 625 |
| Solids: | | |
| 1 | Less than 500 lbs. | \$125 |
| 2 | 500 to 5,000 lbs. | 250 |
| 3 | 5,001 to 25,000 lbs. | 375 |
| 4 | 25,001 to 50,000 lbs. | 500 |
| 5 | Greater than 50,000 lbs. | 625 |
| Gases: | | |
| 1 | Less than 200 cubic feet | \$125 |
| 2 | 200 to 2,000 cubic feet | 250 |
| 3 | 2,001 to 10,000 cubic feet | 375 |
| 4 | 10,001 to 20,000 cubic feet | 500 |
| 5 | Greater than 20,000 cubic feet | 625 |

By having only five quantity ranges, the City is not charging large-volume permittees permit fees that are in proportion to the risks associated with the amount of hazardous materials being stored. For example, under the current fee structure, all permittees with 5,501 gallons or more of storage capacity for gasoline pay the

same \$625 permit fee regardless of how much in excess of 5,500 gallons the permittee stores.³

Specifically, we noted that under the City's current hazardous materials storage permit fee schedule, a tank farm that handles 40,200,000 gallons of gasoline pays \$625 annually for its permit fee, the same amount as a business having only 5,501 gallons of gasoline would pay.

**The City Can Recover More Costs
By Restructuring The Hazardous Materials Storage
Permit Fees To Reflect The Volume And Degree
Of The Hazard Potential Of Permittees
With Large Inventories Of Hazardous Materials**

As part of our audit, we contacted several other jurisdictions to see if their hazardous materials storage permit fee structure more closely reflected the volume and degree of hazard potential of the hazardous materials of permittees with large inventories of hazardous materials. It should be noted that, in general, the hazardous materials permittees in San Jose currently pay the highest hazardous materials permit fees in Santa Clara County. Appendix E summarizes the hazardous materials storage permit fees of the various jurisdictions we contacted.

While most of these jurisdictions did not have fee structures comparable to that of San Jose, we found that the city of Mountain View did. We also noted that Mountain View's hazardous materials storage permit fee structure reflected the

³ It should be noted that a hazardous material is billed for each of the states (liquid, solid, or gas) in which it is stored. Thus, if a permittee keeps a hazardous material in the liquid and solid states, the permittee will pay fees for two hazard classes.

volume and degree of hazard potential of the hazardous materials for those permittees with large inventories of hazardous materials.

Mountain View uses quantity ranges similar to those of San Jose, except that Mountain View has an additional sixth range so that the higher the volume of hazardous materials a business handles, the higher the permit fee it pays. For example, Table V shows Mountain View's permit fees for flammable liquids.⁴

TABLE V
CITY OF MOUNTAIN VIEW
STORAGE PERMIT FEES FOR FLAMMABLE LIQUIDS

| <u>Quantity Range</u> | <u>Fees</u> |
|------------------------------|---|
| 11 to 55 gallons | \$100 |
| 56 to 550 gallons | 150 |
| 551 to 2,750 gallons | 200 |
| 2,751 to 5,500 gallons | 250 |
| 5,501 to 10,000 gallons | 300 |
| Greater than 10,000 gallons | 300 plus \$0.01/gallon in excess of 10,000 gallons |

While the above schedule may not be directly applicable to San Jose, it does give some recognition to the relationship between volume and potential hazards. For example, the 40,200,000-gallon tank farm cited above that pays only \$625 in San Jose would pay \$402,200 if it was located in the city of Mountain View. Furthermore, the county of Contra Costa would collect a permit fee of \$25,990 from a facility with this capacity.

⁴ The city of Mountain View charges different rates for 28 different classes of hazardous materials.

We also determined that in 1992 the city of Los Angeles adopted permit fees that range from \$67 to \$32,000 based on its formula to equitably measure the quantity and relative hazard of the materials handled. Based on the city of Los Angeles formula, the 40,200,000-gallon tank farm would pay \$32,000.

In addition to the above tank farm, we identified five other high-volume tank farms in San Jose. The following are the tank farms located in San Jose with their corresponding maximum capacities:

| Tank Farm | Gallons |
|------------------|-------------------|
| A | 40,200,000 |
| B | 6,500,000 |
| C | 6,100,000 |
| D | 500,000 |
| E | 187,000 |
| F | 60,000 |
| Total | 53,547,000 |

It should be noted that Tank Farm A belongs to a corporation that has several tank farms in the nation, the biggest of which is located in San Jose. Tank Farm A has a pipeline connected to an oil refinery in Concord from which it pumps the fuel. It pumps between 63,000,000 and 84,000,000 gallons of fuel per month and stores it in 32 huge overhead tanks. Each tank is designated for a specific oil company. The owner oil company then pumps the fuel from its tanks and trucks the fuel to its outlets located not only in San Jose but in other cities as well.

Although these tank farms have gigantic overhead oil tanks, they do not pay any more fees than the smaller facilities. In other words, they pay the same \$625

maximum fee for their liquid hazardous materials that a facility with a 5,501-gallon gas tank pays.

In our opinion, the tank farms should pay fees in proportion to the risk they pose to the City. The more hazardous materials they store, the more the catastrophic potential they carry. Even a pinhole leak from a 5,000-gallon fuel storage tank can require very expensive cleanup. For example, a recently discovered "tiny pinhole" in a four-foot underground pipe leading from a fuel storage tank was enough to leak about 20,000 gallons of diesel into the Oakland Estuary. The Port of Oakland officials said the cleanup will cost about \$750,000. In comparison, Tank Farm A stores about 40,200,000 gallons of fuel and has miles of pipeline. Its potential hazard is clearly of much greater proportions.

In addition, the SJFD should identify large-volume hazardous materials permittees, such as those shown above, and structure fees to (1) recognize the potential hazard these stored materials pose and (2) allow for the recovery of the \$900,000 of currently unrecovered HIT costs. According to the Fire Department,

The Fire Department agrees [with the City Auditor's Office] that the volume of hazardous materials is related to the risk potential. The Fire Department, however, does not agree that the risk is directly proportional to the volume. The three pipeline terminals have each spent hundreds of thousands of dollars on fire safety and environmental improvements in the last few years. Each of the terminals now has a subsurface fire suppression system and stores fire extinguishing agents capable of combatting a major fire. The terminals have also provided disaster training to San Jose firefighters and have donated a specialized self contained mobile foam unit for combatting fires with an effective fire suppressing agent. The value of the donation is approximately \$100,000.

**The City Can Recover More Costs By Charging
Hazardous Materials Handlers That Are
Currently Exempt, Including City Enterprises,
School Districts, And Other Government Agencies**

Non-General Fund City departments, school districts, and other government agencies are currently exempt from paying hazardous materials storage permit and inspection fees. However, except for the school districts, these entities are subject to the same inspection and regulations as the fee-paying entities.

With regard to the school districts, the SJFD states that these entities are exempt from the local hazardous materials ordinances. Section 1.07 of the California Code of Regulations--Public Safety states, "*No local ordinance, rule or regulation shall be applicable to . . . public schools. . .*" However, because the SJFD responds to emergencies at the public schools, the SJFD inspects public schools and maintains records of inspection and inventories of hazardous materials at those locations. Furthermore, the SJFD has indicated that inspection of school laboratories in the past have shown unsafe storage and hazardous conditions in the schools.

The SJFD spends at least 121 hours inspecting hazardous materials at the non-General Fund City departments, school districts, and other government agencies. Table VI shows the Program inspection hours spent on exempt agencies for 1991-92.

TABLE VI
CITY OF SAN JOSE
HAZARDOUS MATERIALS PROGRAM
INSPECTION HOURS FOR EXEMPT AGENCIES FOR 1991-92

| <u>Exempt Agencies</u> | <u>Number of Hours</u> |
|--|-------------------------------|
| City of San Jose enterprises: | |
| Convention and Cultural Facilities | 6.0 |
| Water Pollution Control Plant | 19.0 |
| San Jose International Airport | 20.0 |
| Municipal Water System | 13.0 |
| Parking Operations | 6.0 |
| School districts: | |
| Union School District | 6.5 |
| San Jose Unified School District | 1.5 |
| Oak Grove School District | 3.0 |
| Moreland School District | 4.0 |
| Other government and education agencies: | |
| Santa Clara Valley Water District | 7.5 |
| East Side Union High School | 18.5 |
| Evergreen Valley College | 8.0 |
| San Jose City College | 2.0 |
| Campbell Union High School | 3.0 |
| Berryessa Union School | 2.0 |
| Santa Clara County Office of Education | <u>1.0</u> |
| Total Inspection Hours | 121.0 |

Our survey of several cities and counties revealed varying practices in exempting government agencies from paying hazardous materials storage permit and inspection fees. Unlike the city of San Jose, certain cities and counties charge government agencies for the permit and inspection fees. For example, the city of Los Angeles started charging permit and inspection fees to government agencies in 1992-93. Likewise, the city of Mountain View exempts the city's general fund and enterprise departments but not the school districts within its jurisdiction. Table VII compares San Jose's practice with those of other jurisdictions.

TABLE VII

**COMPARISON OF VARIOUS CITIES AND COUNTIES
IN EXEMPTING GOVERNMENT AGENCIES
FROM HAZARDOUS MATERIALS STORAGE
PERMIT AND INSPECTION FEES**

| Inspecting Entity | Government Agencies (A) | | | | |
|----------------------------------|-------------------------|----------------|--------------------------|-----------------------------|------------------|
| | Federal Agencies | State Agencies | General Fund Departments | Enterprise Fund Departments | School Districts |
| City of San Jose | Yes | Yes | Yes | Yes | Yes |
| City of Mountain View (B) | n/a | n/a | Yes | Yes | No |
| City of Sunnyvale | Yes | Yes | Yes | Yes | Yes |
| City of Milpitas | Yes | Yes | Yes | Yes | Yes |
| City and County of San Francisco | Yes | No | No | No | No |
| City of Los Angeles (C) | No | No | Yes | No | No |
| City of Berkeley | No | No | Yes | Yes | No |
| Sacramento County (D) | Yes/No | No | No | No | No |
| Santa Clara County | No | No | No | No | No |

Notes

- (A) - "Yes" means exempted from permit and inspection fees.
- (B) - There are no federal and state agencies in the city of Mountain View that are handling hazardous materials. Moffett Field, although located in Mountain View, is under the jurisdiction of Santa Clara County
- (C) - The city of Los Angeles subsidized the hazardous materials storage permit fees until July 1991.
- (D) - Sacramento County does not exempt some federal agencies from permit and inspection fees.

By amending its policy of exempting government agencies from hazardous materials storage permit and inspection fees, the City could collect at least \$40,000 more in annual revenues.

Table VIII shows a list of government agencies from which the SJFD could have collected permit and inspection fees during 1992-93.

TABLE VIII
GOVERNMENT AGENCIES FROM WHICH FEES
COULD HAVE BEEN COLLECTED DURING 1992-93

| <u>Exempt Agencies</u> | <u>Fees Waived⁵</u> |
|--|---------------------------------------|
| City of San Jose enterprises: | |
| Convention and Cultural Facilities | \$ 7,732 |
| Water Pollution Control Plant | 7,690 |
| San Jose International Airport | 4,520 |
| Municipal Water System | 3,045 |
| Parking Operations | 630 |
| School districts: | |
| Union School District | 1,618 |
| San Jose Unified School District | 1,393 |
| Oak Grove School District | 1,035 |
| Moreland School District | 880 |
| Other government and education agencies: | |
| Santa Clara Valley Water District | 4,213 |
| East Side Union High School | 3,008 |
| Evergreen Valley College | 2,760 |
| San Jose City College | 2,065 |
| Campbell Union High School | 785 |
| Berryessa Union School | 690 |
| Santa Clara County Office of Education | 345 |
| Total Lost Revenue | <u>\$42,409</u> |

According to the City Attorney, if the calculation of costs of the Program includes the cost of servicing government agencies, appropriate fees should be collected from those agencies.

⁵ Fees waived include fire safety permit and inspection fees.

The City Can Recover More Costs By Charging Retailers Who Stock Hazardous Materials Packaged For Consumers

The San Jose Municipal Code exempts hazardous materials that are packaged for consumers. Section 17.68.110 B states:

This chapter [Hazardous Materials Storage Permit] does not apply to . . . Hazardous materials when contained solely in consumer products packaged for distribution to, and use by, the general public or commercial products used at the facility solely for janitorial or minor maintenance purposes such as paint thinner or wax strippers.

In contrast, the city and county of San Francisco and the city of Sacramento require retailers of hazardous materials to be registered and to pay registration fees. San Francisco collects a \$340 biennial processing fee, while Sacramento collects a \$50 annual registration fee.⁶

In the past, San Francisco exempted retail establishments from the hazardous materials storage permit fee. However, San Francisco recently started charging the permit fee to these establishments because of the hazards posed by their on-site inventories. According to the city and county of San Francisco Bureau of Toxics, Health & Safety Services,

Although there is somewhat less risk due to the absence of transfer operations, these facilities often have larger quantities and more hazards on site than non-retail businesses. Therefore, it is not in the interest of public health and safety to make a distinction between wholesale and retail businesses. Retail business storing hazardous materials above threshold quantities for inclusion will be subject to the provisions of the ordinance.

In our opinion, it would be in the city of San Jose's best interest to require hazardous materials retailers to register with the City and to pay hazardous

⁶ Sacramento collects registration fees from about 235 retailers. San Francisco only recently implemented the registration requirement and has not yet determined the number of businesses covered by this program.

materials storage permit fees for two reasons. First, the City would benefit from the additional revenues these fees would generate. Second, registering hazardous materials retailers (and other businesses) will allow the City to better monitor the handlers of hazardous materials in San Jose.

CONCLUSION

The City could recoup current and prior years' costs by including Hazardous Incident Team (HIT) expenditures in the cost recovery system for the Hazardous Materials Program. As a result, the Program will be able to

- (1) generate \$900,000 annually in additional fees to cover HIT current costs and
- (2) reimburse the General Fund about \$2.8 million for the HIT costs the City incurred in prior years but did not recoup.

In addition, the San Jose Fire Department should strive to recover the additional annual \$900,000 Hazardous Materials Program costs by evaluating the following options and consulting with the City Attorney on

- Restructuring the hazardous materials storage permit fees to reflect the volume and degree of the hazard potential of permittees with large inventories of hazardous materials;
- Collecting hazardous materials storage permit fees from hazardous materials handlers that are currently exempt, including City enterprises, school districts, and other government agencies; and
- Collecting hazardous materials storage permit fees from retailers who stock hazardous materials packaged for consumers.

RECOMMENDATIONS

We recommend that the San Jose Fire Department:

Recommendation #1:

Include in the cost recovery system for the Hazardous Materials Program the costs of the Hazardous Incident Team activities that relate to the City's Hazardous Materials Program. (Priority 1)

Furthermore, we recommend that the San Jose Fire Department and the City Attorney:

Recommendation #2

Report to the City Council on the feasibility of recouping prior years' Hazardous Materials Program-related costs that were subsidized by the General Fund. (Priority 1)

Recommendation #3:

Report to the City Council on the feasibility of recovering the additional annual \$900,000 Hazardous Materials Program costs by

- a. Restructuring the hazardous materials storage permit fees to reflect the volume and degree of the hazard potential of permittees with large inventories of hazardous materials;
- b. Collecting hazardous materials storage permit fees from hazardous materials handlers that are currently exempt, including City enterprises, school districts, and other government agencies; and
- c. Collecting hazardous materials storage permit fees from retailers who stock hazardous materials packaged for consumers.

(Priority 1)

OTHER PERTINENT INFORMATION

The San Jose Fire Department Has Updated Its Computerized System For The Hazardous Materials Database To Conform To The Department's Record Retention Policies

The San Jose Fire Department (SJFD) maintains a computerized billing system called FIBS (Fire Inspection Billing System). The SJFD operates FIBS through the VAX system at the city of San Jose's (City) Information Systems Department. FIBS has a database for all annual renewable permits that is updated for new permit information.

For its inspection activities, the SJFD needs to know which facilities have been inspected, how many more facilities remain to be inspected during the current fiscal year, and how the current fiscal year's inspections are progressing when compared with its current year's plan and performance during previous fiscal years. However, the computer program for the hazardous materials transactions database automatically purges data for prior years after a given period. Without the previous fiscal years' data, the SJFD cannot effectively evaluate and plan its inspection activities for both Hazardous Materials and Fire Safety Code Enforcement Programs. The SJFD should formulate policies and establish procedures on the retention of its Hazardous Materials Program's transaction records and coordinate with the Information Systems Department to modify the FIBS computer programs so they conform to the record retention policies that the SJFD adopts.

After we discussed this matter with SJFD staff, they informed us that the Information Systems Department and the SJFD have corrected the problem.

The City Does Not Require Hazardous Materials

Storage Permit Applicants To Submit Proof Of Insurance Or Financial Responsibility

The San Jose Municipal Code requires hazardous materials storage permittees to ". . . *indemnify, hold harmless and defend the city against any claim, cause of action, disability, loss, liability, damage, cost or expense, howsoever arising, which occurs by reason of an unauthorized discharge in connection with permittee's operations under this permit. . .*" Our review indicated that the City procedures do not require that permittees provide insurance or evidence of financial capacity to protect City interests. According to the City's Risk and Loss Control manager, the City does require some of the applicants for other licenses to provide proof of insurance or financial responsibility; but, for the most part, those situations occur when City property is used in some manner or the applicant's operation is in the nature of a public service that should be regulated by the City. As a result, the City may (1) issue permits to applicants who do not possess the means to protect the City's interests in the event of an unauthorized discharge from the permittee's hazardous materials and (2) be subject to substantial damages and costs should a disaster occur.

We requested that the City's Risk and Loss Control manager review this issue. In his response (shown in Appendix G), he stated that insurance requirements do not need to be added to the permit process for hazardous materials storage for the following reasons:

- The Municipal Code limits the City's exposure from this source by
 - Requiring the permittee to reimburse the City for any clean-up cost resulting from an unauthorized discharge of hazardous materials;
 - Requiring the permittee to indemnify the City for any unauthorized discharge of hazardous materials;

- Including a disclaimer of liability on behalf of the City.
- The Environmental Protection Agency (EPA) has not promulgated requirements for evidence of financial responsibility or insurance for the storage of hazardous materials/substances. (EPA does require that organizations clean up spills in the event of an accidental discharge.)
- The federal regulations, which the state of California administers, already require that owners of underground storage tanks provide evidence of insurance.
- Environmental impairment liability insurance is expensive, when available, and insurance companies will not add the city of San Jose as an additional insured under such a policy.
- Public entities surveyed do not require evidence of financial responsibility.

Finally, the City's Risk and Loss Control manager stated that although environmental impairment liability insurance will cover damages to the property of others, it normally will not cover the damages to the insured's property. Therefore, in the worst case scenario where the permittee is forced to go out of business, the City may have to pay for clean-up costs of the permittee's property, even if the permittee had insurance.

**Our Limited Test Of Hazardous Materials
Inventories And Storage Permit Fees
Indicated Discrepancies In Two
Of The Six Facilities We Tested**

We tested the hazardous materials inventories of 6 out of the about 2,300 permitted facilities in the City to determine if these businesses are reporting their hazardous materials in accordance with hazardous materials regulations. During our test, we were accompanied by a hazardous materials inspector who guided us during the inspection. We also reviewed our findings with the Hazardous Materials Program manager.

We noted the following discrepancies in the hazardous materials inventories and storage permit fees of two of the six facilities we tested:

- **Facility #1** - This facility did not report a 55-gallon drum of diesel fuel (combustible material) and a 55-gallon drum of anti-freeze/coolant (other regulated material) that were without secondary containers. These were reportable hazardous materials under the Hazardous Materials Storage Ordinance. However, the SJFD maintains that the City did not lose revenue because the additions did not increase the amount of flammable liquids permitted by quantity range three.
- **Facility #2** - The City billed this facility's 3,500-gallon tank of diesel fuel as range three instead of four, resulting in the loss of \$125 in City revenues.

We also noted that the inspectors for hazardous materials have permanently assigned facilities to inspect. The inventory summaries the inspectors submit, which are the bases of the permit fee billings, are not verified by any other personnel. According to the SJFD, businesses prefer working with an inspector familiar with their facility; maintaining the same inspector promotes a more positive business climate. However, the SJFD has agreed to spot check a number

of facilities. The supervisor will accompany some inspectors and verify a sample of inventory summaries.

LIST OF ABBREVIATIONS

For the purpose of convenience and readability, we will use the following abbreviations in our report.

| | |
|---------|-------------------------------------|
| City | City of San Jose |
| EPA | Environmental Protection Agency |
| FIBS | Fire Inspection Billing System |
| HIT | Hazardous Incident Team |
| HMMP | Hazardous Materials Management Plan |
| Program | Hazardous Materials Program |
| SJFD | San Jose Fire Department |